IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 29633 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANJAYBHAI NATVARLAL PATEL - Petitioner(s)
Versus
THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR NILESH A PANDYA for Petitioner(s) : 1,
MR LR PUJARI GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2, 4,
DS AFF.NOT FILED (N) for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 17/12/2007

ORAL JUDGMENT

1.0 By way of this petition, the petitioner has prayed to quash and set aside the order passed by the Dy. Additional Superintendent of Stamps, Gujarat State Gandhinagar in Stamp Appeal

No.32/KH/07 dated 20.06.2007 as well as the order passed by the Dy. Collector, Stamp Duty Assessment Department, Kothi Building dated 29.11.2003 .

2.0 The brief facts of the case are that the petitioner purchased a property situated at Census No.2/529 in Raopura, Siyapura area of Vadodara city vide registered Sale Deed dated 20.05.2002 from one Mr. Nalinkant Tribhovandas Patel.

2.1 In pursuance of that a show cause notice for the payment of deficit stamp duty totaling to an amount of Rs.22,230/- along with fine of Rs.250/- came to be issued by respondent No.4 to the petitioner. In the said notice it was stated that if the petitioner will not pay the deficit stamp duty, the matter will be referred to respondent No.3 for appropriate actions.

2.2 Thereafter, a notice dated 29.11.2003 was

issued by respondent No.3 to the petitioner. Petitioner filed detail reply to the aforesaid notice stating that he had already paid the requisite stamp duty. Thereupon, after giving an opportunity of hearing to the petitioner, respondent No.3 decided the market value of the aforesaid property to be Rs.2,88,006/-. As per the aforesaid valuation, petitioner had to pay total stamp duty of Rs.28,806/-. However, since the petitioner had already paid stamp duty of Rs.22,510/-, he had to pay only the balance amount of the aforesaid stamp duty i.e. Rs.6,296/- along with Rs.250/- towards penalty.

2.3 The petitioner, thereafter, purchased another property on the second floor of the aforesaid premises vide registered sale deed dated 5th February, 2003 for Rs.2,00,000/-. In respect of the aforesaid property no notice was received by the petitioner. But, later on the petitioner came to know that an ex-parte order had been passed against him by respondent No.3

requiring him to to pay the deficit stamp fee.

2.4 The case of the petitioner is that though the property purchased by him in the year 2003 is situated at the second floor on the very same premises for which respondent No.3 had determined the market value of Rs.2,88,006/-, for the second property respondent No.3 determined the market value of Rs.6,27,100/- and directed the petitioner to pay deficit stamp fee of Rs.42,960/- along with penalty. Hence, the petitioner preferred an appeal against the said order which was rejected by respondent No.2 on the ground of delay. Hence, the present petition.

3.0 Mr. Pandya, learned Advocate for the petitioner has submitted that the respondent-Authorities have committed an error by not taking into consideration the fact that the petitioner had purchased the first property on the ground floor of the premises in question for which the

market value determined by respondent No.3 was Rs.2,88,066/- whereas in respect of the second property situated on the second floor of the very same premises respondent No.3 determined market value of Rs.6,27,100/- which shows total non-application of mind on the part of the respondent-Authorities.

3.1 Learned Advocate has further submitted that neither any material supplied nor any reasons assigned for the valuation done by the respondent No.3 and that the orders have been passed in a cyclostyled form by filling up blanks.

4.0 Heard learned Counsel for the parties and perused the documents placed on record. From the record it transpires that the show-cause notice as well as order passed by respondent No.4 and respondent No.3 are in printed forms and that the same are issued by filling blanks. Apart from that, respondent No.3 has not supplied any

material to the petitioner on the basis of which the valuation of the property has been determined. In that view of the matter here it would be relevant to refer to decision of this Court in the case of ***"B.M. Bharwad Vs. State"*** reported in 2005(2) GLR 1792 wherein it has been observed that ***it is the statutory duty of the Officer to convey in the notice the material on which the valuation of the property has been determined***.

4.1 In the case on hand, the respondent No.3 has not supplied any material to the petitioner on the basis of which the valuation of the property of the petitioner was determined and on the basis of which respondent No.3 came to the conclusion that the stamp duty paid by the petitioner is less. Apart from that from the record it transpires that before passing the impugned orders no opportunity of hearing was given to the petitioner.

4.2 The aforesaid fact shows that the respondent-Authorities have passed the impugned orders without applying their minds. Admittedly, there have been neither any material supplied nor any reasons assigned by respondent Nos. 3 and 2 for passing the impugned orders.

4.3 The respondent Nos.3 and 2 are quasi-judicial Authorities, and hence, being quasi-judicial authorities, they are required to supply the relevant material on the basis of which the valuation of the property of the petitioner was determined. Apart from that, they are also required to deal with the contentions raised by the parties concerned and to consider various provisions of the Act and the law laid down by this Court. I am, therefore, of the opinion that the ends of justice would be met if the matter is remanded to the respondent No.3 for its consideration afresh on merits.

5.0 In the result, the petition is allowed.

The impugned order passed by the Dy. Additional Superintendent of Stamps, Gujarat State Gandhinagar in Stamp Appeal No.32/KH/07 dated 20.06.2007 as well as the order passed by the Dy. Collector, Stamp Duty Assessment Department, Kothi Building dated 29.11.2003 are quashed and set aside. The matter is remanded to the respondent No.3 for its consideration afresh on merits. The respondent No.3, after hearing the petitioner and after considering all the contentions raised before it, shall pass a reasoned order without being influenced by the order passed by this Court. Rule is made absolute. No order as to costs.

(M.D. Shah,J.)

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